



Appellant-Respondent, Antonio<sup>1</sup> Long (“Father”), challenges the juvenile court’s determination that A.M. is a child in need of services (“CHINS”). Upon appeal, Father challenges the juvenile court’s grounds for A.M.’s CHINS adjudication by claiming that the court failed to make the necessary findings of fact and further, that the evidence was insufficient to support the adjudication with respect to him.

We reverse and remand.

The record reveals that A.M. was born on December 8, 2005 to Kennietra Mack and Father.<sup>2</sup> On approximately January 19, 2006, Marion County Department of Child Services (“DCS”) case manager Marci Gordon removed A.M. from Mack following DCS’s receipt of a report that Mack had given birth to A.M. and that A.M. was not safe. At the time, Mack had two other children who had been placed in foster care, one of whom had been adjudicated a CHINS and was the subject of termination proceedings, and the other to whom she had lost her parental rights. Father was not an alleged father of either of Mack’s other two children.

DCS filed a petition alleging A.M. to be a CHINS on January 24, 2006. The petition was largely based upon Mack’s alleged failure to comply with services but also stated that Father was incarcerated in the “Michigan City Penitentiary” and “ha[d] not demonstrated the ability or willingness to appropriately parent the child.” App. at 16.

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<sup>1</sup> References in the record are to both “Antonio” and “Jaron” Long. Long indicated at the CHINS pre-trial hearing that “Jaron” is his middle name and that he goes by either name.

<sup>2</sup> Mack appealed the juvenile court’s adjudication of A.M.’s CHINS determination, which a panel of our court affirmed, with one judge dissenting, in In re A.M.<sup>3</sup>, No. 49A02-0605-JV-371 (Ind. Ct. App. Dec. 22, 2006).

Testimony by Gordon at the April 20, 2006 fact-finding hearing was that A.M. was a CHINS because of the “continued lack of services being completed by the mother.” Tr. at 36. Gordon further testified that at the time of the removal, A.M., who was in Mack’s care, had “very severe diaper rash.” Tr. at 39. Gordon testified that Father was incarcerated at the time of the DCS investigation following A.M.’s birth, that this was the only reason for filing a CHINS petition with respect to Father, and that he had not done anything to impair or endanger A.M.<sup>3</sup>

Case manager Shanise Abrams appeared to believe that Father’s history of drug abuse and his past incarceration demonstrated his need for services but conceded that his drug use appeared to have occurred before A.M. was born and that paternity had not yet been established while he was incarcerated. In any event, Abrams noted that following Father’s release from incarceration and the demonstration of his paternity of A.M., Father had been attending his scheduled visitations with A.M., and that those weekly visits with A.M. were “going fine” and proving to be positive. Tr. at 54.

Father testified that upon leaving incarceration he had become employed, had complied with his drug testing requirements and had not been found in violation of his probation. He further testified that while in jail he took anger management and parenting classes. Additionally, Father claimed that A.M. was his only child. The State did not challenge Father’s testimony.

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<sup>3</sup> Gordon testified that although Father was included on the petition because “all fathers are included in petitions,” Father was not in her initial report to her knowledge. Tr. at 41.

Upon appeal, Long challenges the court's adjudication of A.M. as a CHINS when, as Long claims, the court made no specific findings regarding his alleged threat to A.M.'s well-being, and the evidence shows to the contrary that his interactions with A.M. are positive.

When we review a case where a trial court has entered findings, we will not set aside the judgment of the trial court unless it is clearly erroneous. In re J.Q., 836 N.E.2d 961, 966 (Ind. Ct. App. 2005), reh'g denied. A trial court's findings and judgment are considered to be clearly erroneous only if a review of the whole record leads us to a definite and firm conviction that a mistake has been made. Id. In reviewing findings made by the trial court, we neither reweigh the evidence nor judge the credibility of witnesses. Id. Instead, we consider only the evidence and reasonable inferences drawn therefrom which support the judgment. Id.

The Fourteenth Amendment to the United States Constitution gives parents a right to establish a home and raise their children. In re D.G., 702 N.E.2d 777, 781 (Ind. Ct. App. 1998). "A parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005) (quoting Troxel v. Granville, 530 U.S. 57, 65 (2000)). "Indeed the parent-child relationship is 'one of the most valued relationships in our culture.'" Id. (quoting Neal v. DeKalb County Div. of Family & Children, 796 N.E.2d 280, 285 (Ind. 2003)). However, a parent's right to his children is balanced against the State's limited authority to interfere for the protection of the children. See D.G., 702 N.E.2d at 781.

Indiana Code § 31-34-1-1 (Burns Code Ed. Supp. 2006) provides the following:

“ A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.”

In concluding that A.M. was a CHINS, the juvenile court stated the following in its April 20, 2006 fact-finding and dispositional order:

“ The Court having heard the statements and considered the file and facts in this matter, now finds the child to be in need of services. The Court finds by preponderance of the evidence by trial that the child is in need of services.

The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home. After reviewing the reports and information from the Office of Family and Children, service providers and other sources, which the Court now incorporates into this order (see Court file), the Court also finds that the services offered and available have either not been effective or been completed that would allow the return home of the child without Court intervention.

The Court finds that it is contrary to the health and welfare of the child to be returned home and that reasonable efforts have been made to finalize a permanency plan for the child.” App. at 13.

As we stated in J.Q., 836 N.E.2d at 966, regarding language which was very similar and in places identical to the above language used by the juvenile court to support its adjudication of A.M. as a CHINS, the court’s limited findings make our review of this case difficult. Indiana Code § 31-34-19-10 (Burns Code Ed. Supp. 2006) requires that the juvenile court give reasons for its disposition in a CHINS proceeding. In J.Q., upon

remanding to the juvenile court to follow more specifically the requirements of I.C. § 31-34-19-10, we emphasized the need for a juvenile court to make clear findings of fact and suggested that the failure to make such findings created potential procedural due process problems for any subsequent termination proceedings. 836 N.E.2d at 966-67 (citing A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1112-13 (Ind. Ct. App. 2000), trans. denied).

Further, unlike in J.Q., where we stated that the record yielded evidence which could support either outcome, here there is no evidence supporting the adjudication of A.M. as a CHINS with respect to Father. Id. at 966. The only ground in A.M.'s CHINS petition regarding Father's behavior as a justification for the adjudication, as Gordon testified, was that Father was incarcerated. Since the petition was filed, however, and well before the CHINS adjudication, Father was released from incarceration and offered services.<sup>4</sup> All evidence at the hearing indicated he was fully cooperative with the services, and as Abrams testified, Father's interactions with A.M. were positive. Additionally, the State does not dispute that since leaving prison, Father has become employed and has not violated his probation, and that while in prison, Father took multiple classes, including a parenting class.

Given this evidence, and the absence of any specific evidence to the contrary in the juvenile court's order, we are reluctant to defer to the court's conclusory statements

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<sup>4</sup> Father testified he was released from incarceration on February 8, 2006. He further testified that he had moved into a house with Mack, which the State points to as evidence supporting A.M.'s CHINS adjudication. The State's focus at the hearing, however, was not upon the environment of Mack's home as a basis upon which to adjudicate A.M. a CHINS, but rather upon her personal failings in attending and responding to services. Further, the court did not focus upon Father's and Mack's cohabitation in adjudicating A.M. a CHINS with respect to both parents.

which find, without specific factual justification from the record, that A.M. is a CHINS with respect to Father. Such determination with respect to Mack was supported by the record. The record simply does not support a similar adjudication with respect to Father. Accordingly, we conclude the court's adjudication of A.M. as CHINS, with respect to Father, was in error.

The judgment of the juvenile court is reversed, and the cause is remanded with instructions to the court to vacate A.M.'s CHINS adjudication with respect to Father.

SHARPNACK, J., and CRONE, J., concur.